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Supreme Court, U.S.
FILED
FEB 5 - 2009
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No. 08-650

In The

SUPREME COURT OF THE UNITED STATES

George C. Evans - Petitioner,

v.

David Eldridge and the Texas Department of Public Safety – Respondents,

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On Petition for a Writ of Certiorari to Supreme Court of Texas

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PETITION FOR A REHEARING ON WRIT OF CERTIORARI

George C. Evans
344 CR 1297
Yantis, Texas 75497
903-8787070

Petitioner's Petition for a Rehearing

Petitioner states that **MATERIAL EVIDENCE** which had been subpoenaed of the defendant was **SUPPRESSED** and withheld from a jury trial. (Although said jury trial was improper/illegal and should be declared **VOID** as stated by the presiding judge), Reference sworn testimony January 24, 2008 (See Appendix [D] of original Writ of Certiorari) Suppressed evidence is **MATERIAL IF THERE IS "REASONABLE PROBABILITY THAT HAD THE EVIDENCE BEEN DISCLOSED, RESULT OF PROCEEDING COULD/WOULD HAVE BEEN DIFFERENT.** Ref. West C.A. 5 (LA) 1986, RE Smith 142 F.3d 852, C.A. 5 (LA) 1998, CA 10 (KAN) 2002, 28 USCA Sports v. Lankford 275 F.3d 996, CA 8 (Iowa) 2000.

The Material "Suppressed Evidence" is confirmed by the Dallas Court of Appeals, **UNPUBLISHED**, i.e. Original Writ Appendix [C] which says "Patricia Holmes, an officer in charge of the internal affairs division of DPS (Department of Public Safety) investigated the incident and testified in her deposition that **"EVANS DID NOT RESIST ARREST"**, therefore the improper/illegal jury trial that (by the presiding judges sworn testimony) should be declared **VOID.** Appendix [D] of original writ.

The logic for declaring the jury trial **VOID** was that the judge by previously rendering summary judgment for the plaintiff (petitioner) had previously determined liability, but due to an administrative error of docketing the case for Jury Trial, instead of **JURY TRIAL FOR DAMAGES ONLY** pursuant to the Summary Judgment order. This resulted in a Jury Trial for Liability which by law is illegal, as liability had previously been firmly established as a result of the petitioner being awarded summary judgment by **ORDER**, which the Court of Appeals affirmed.

The defendant and it's counsel of record, the Attorney General's Office of Texas, were **SUBPOENAED BY THE PETITIONER FOR ALL INFORMATION** related to the case/trial, but while under subpoena, withheld the internal affairs report and deposition from the plaintiff (petitioner) prior to and during the improper jury trial which unfortunately prevailed. The key reference as to the materiality of the report/deposition is that it **CONTROVERTS (100%)** the testimony of the defendant during the trial that Evans was trying to take his gun away from him (defendant) therefore, he had to shoot and kill Evans. His superiors say this is **UNTRUE AND IS OBVIOUSLY A LIE** by controverting his plea of defense to the jury. If this is not material then materiality does not exist.

Neither the Petitioner nor the Judge saw the unpublished opinion of the Court of Appeals until late 2007, when a Dallas law firm (in litigation with the defendant) advised the petitioner that he should

review the Court of Appeals (unpublished) opinion and mandate, as he would be shocked at what they would confirm in contrast to what took place in the improper jury trial. Petitioner only recently discovered that the deposition was taken by a lawyer representing a different member of the family in a lawsuit that the presiding judge had **"DISMISSED"** for failure to comply with filing requirements. That counsel never made, (other than an illegal/unauthorized filing with the Court of Appeals), the report or deposition available or known to the petitioner or court before or during the jury trial. However, the defendant and his counsel were fully aware or the report and deposition and suppressed same from evidence, and
evidence that would have controverted defendants entire defense, and could/would have altered the outcome of the trial.

To assist the Court with a Time log of events the following is offered:

(1) Feb. 27, 1990 DPS officer Eldridge kills Tim Evans (age 25)

(2) Sept. 15, 1994 Judge Marshall, 14th District Court, Dallas, renders summary judgment i.e. (Wrongful Death Statute) in favor of petitioner (plaintiff pro se Evans) and against defendant, while denying defendants plea of immunity. Ref. Appendix [A] original writ.

(3) Defendant filed appeal to the District Court of Appeals on immunity and motion to stay trial for damages until immunity appeal is heard.

(4) Court of Appeals filed unpublished opinion, appendix [C] of original writ and mandate, appendix [B} affirming District Court's ORDER, while denying defendants plea of immunity, and supplemental motion for summary judgment. Appendix [B] Of key importance is that the defendant **DID NOT CONTEST OR APPEAL THE SUMMARY JUDGMENT GRANTED TO THE PETITIONER** (Plaintiff). When the court denied defendants motion for immunity they also lifted the order of the defendant to stay the jury trial for damages (merits) (until their appeal was heard). The court lifted the "trial on the merits" to enable **THE TRIAL FOR DAMAGES ONLY TO PROCEED.**

(5) The **ORDER** of the 14th District Court awarding summary judgment for the petitioner **HAS NEVER BEEN EXECUTED OR OVERTURNED BY ANY COURT, AND REMAINS OUTSTANDING.**

(6) The **MANDATE** affirming the 14th District Court's order has never been overturned and remains outstanding. **THERE IS NO STATUTE OF**

LIMITATIONS ON AN ORDER OR MANDATE, and unless overturned, by law they are to be executed and do not expire, as **THEIR LIFE IS TO INFINITY.**

Pursuant to the requirements for a rehearing under Rule 44, the critical **SUPPRESSED EVIDENCE** is **SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED IN THE ORIGINAL WRIT.**

The additional references to orders, opinions, mandates and timing of events are given to assist the Court in this unusual and complex Rehearing.

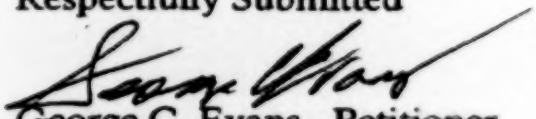
As a result of the **MATERIAL SUPPRESSED EVIDENCE** by the respondents which prevented petitioner from obtaining equitable relief in a trial for damages only as so ordered and mandated; **PETITIONER WAS DENIED DUE PROCESS AND AS SUCH HIS 5TH AND 14TH U.S. CONSTITUTIONAL AMENDMENTS WERE VIOLATED.**

At Roman Catholic Diocese v. County of Dallas 228 S.W. 3d 477-480 **(Texas App. – Dallas 2007)**. A collateral attack may be used to set aside a judgment that is void or involves fundamental error. A party making a collateral attack on a judgment does not need to meet the requirements of
a bill of review. There is no set procedure for a collateral attack and no statute of limitations.

PRAYER

Petitioner hereby **PRAYS** of this **HONORABLE COURT** to revisit facts, events, court orders, mandates and prevailing case law and to issue a Writ of Certiorari to the Texas Supreme Court to mandate the 14th District Court to hold a trial for damages only as ordered and mandated which have never been controverted or overturned by any court. There is pursuant to the Petition for Rehearing and Original Writ , massive case law in favor of Petitioner's position.

Respectfully Submitted



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